

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION**

FRANCISCO VALENCIA PRETEL

§

v.

§

CIVIL ACTION NO. 5:24-CV-61-JRG-JBB

WARDEN, FCI-TEXARKANA

§

ORDER

Before the Court is Petitioner Francisco Pretel's petition for writ of habeas corpus under 28 U.S.C. § 2241 challenging the legality of his conviction. (Dkt. No. 1.) The case was referred to United States Magistrate Judge J. Boone Baxter in accordance with 28 U.S.C. § 636.

On August 30, 2024, the Magistrate Judge issued a Report recommending the above application for the writ of habeas corpus be dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(b) for failure to prosecute or to obey an order of the Court. (Dkt. No. 4.) A copy of the Report and Recommendation was sent to Petitioner at his last known address, return receipt requested, but no objections have been received. The Fifth Circuit has explained that where a letter is properly placed in the United States mail, a presumption exists that the letter reached its destination in the usual time and was actually received by the person to whom it was addressed. *Faciane v. Sun Life Assurance Company of Canada*, 931 F.3d 412, 420-21 and n.9 (5th Cir. 2019).

Because no objections have been received, Petitioner is barred from *de novo* review by the District Judge of the Magistrate Judge's proposed findings, conclusions and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the District Court. *See Duarte v. City of Lewisville*,

Texas, 858 F.3d 348, 352 (5th Cir. 2017); *Arriaga v. Laxminarayan*, Case No. 4:21-CV-00203-RAS, 2021 WL 3287683, at *1 (E.D. Tex. July 31, 2021).


The Court has reviewed the pleadings in this case and the Report of the Magistrate Judge. Upon such review, the Court has determined the Report of the Magistrate Judge is correct. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989) (where no objections to a Magistrate Judge's Report are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law"). Accordingly, it is

ORDERED that the Report of the Magistrate Judge (Dkt. No. 4) is **ADOPTED** as the opinion of the District Court. It is further

ORDERED the above-captioned petition for writ of habeas corpus is **DISMISSED WITHOUT PREJUDICE** for failure to prosecute or to obey an order of the Court. It is further

ORDERED that any and all motions which may be pending in this action are hereby **DENIED**.

So ORDERED and SIGNED this 1st day of October, 2024.



RODNEY GILSTRAP
UNITED STATES DISTRICT JUDGE